

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:03-cr-00077-JSM-TBM-ALL

SAMI AMIN AL-ARIAN, ET. AL

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**MOTION OF MEDIA GENERAL OPERATIONS  
FOR ACCESS TO COMPLETED JUROR QUESTIONNAIRES**

Media General Operations, Inc. d/b/a *The Tampa Tribune* (hereinafter “the Tribune”), moves to intervene<sup>1</sup> in this action for the limited purpose of seeking access to the Completed Juror Questionnaires. This Court previously ordered (Dkt. # 1137) the release of those documents after a verdict is returned. Because the trial is complete and a verdict has been returned, no reason exists for further concealment of records and the public’s presumptive right of access to the Completed Juror Questionnaires require that they be released. Grounds for this motion are set forth in the following memorandum.

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<sup>1</sup> As a member of the news media, the Tribune — a daily newspaper — has standing to intervene for the limited purpose of seeking access to judicial proceedings and records. *See, e.g., United States v. Ellis*, 90 F.3d 447, 449 (11th Cir. 1996), *cert. denied*, 117 S. Ct. 964 (1997); *In re Subpoena to Testify Before Grand Jury*, 864 F.2d 1559, 1561 (11th Cir. 1989) (intervening members of news media had standing to appeal scope of closure order); *Newman v. Graddick*, 696 F.2d 796, 800 (11th Cir. 1983).

## **MEMORANDUM OF LAW**

### **BACKGROUND**

On May 27, 2005, this Court entered an Order (Dkt. # 1137) sealing the Completed Juror Questionnaires filed anonymously by members of the jury pool (hereinafter referred to as the “Order”). In an effort to maintain an innominate jury and to protect the Defendants’ fair trial rights, the Order sealed the juror questionnaires until the jury reached a verdict. Specifically, the Order states, “the Tribune’s common-law right of access to these judicial records must be curtailed somewhat in light of the Defendants’ superior constitutional rights to a fair trial. See Newman, 696 F.2d at 803. This curtailment, however, must not last in perpetuity because the benefits produced by not disclosing the completed juror questionnaires will diminish after the jury has rendered a verdict.” As a result, this Court granted the Tribune’s motion to intervene and access to the Completed Juror Questionnaires and ordered that the juror questionnaires shall not be distributed to the public until after the jury renders its verdict.

The trial is now complete, and the jury has rendered a verdict.

### **ARGUMENT**

The public enjoys a presumptive right of access to court proceedings and to materials filed with the Court, and under the First Amendment and the common law this right may be abridged only if the court determines that closure serves a compelling or substantial interest and is no greater than necessary to serve that interest. *Newman v. Graddick*, 696 F.2d 796, 802 (11th Cir. 1983); *United States v.*

*Brazel*, 102 F.3d 1120, 1155 (11th Cir. 1997). The right of access to criminal trials permits the public to participate in and serve as a check upon the judicial process. *See Globe Newspaper Co. v. Superior Court for the County of Norfolk*, 457 U.S. 596, 606 (1982). The First Amendment right of access to criminal trials extends to the voir dire examination of potential jurors. *See, e.g., Press-Enterprise Co. v. Superior Court of Calif.*, 464 U.S. 501 (1984).

Since its inception, jury selection has “presumptively been a public process.” *Id.* at 505. Such “[o]penness . . . enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.” *Id.* at 508. Moreover, “the right of access to voir dire examinations encompasses equally the live proceedings and the transcripts which document those proceedings.” *See United States v. Antar*, 38 F.3d 1348, 1359 (3d Cir. 1994). Further, the United States Supreme Court has held that the presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. *See Press Enterprise*, 464 U.S. at 510.

In the instant case, this Court conducted the necessary balancing test to seal the juror questionnaires. Further, the Court specifically ordered the jury questionnaires sealed until after the completion of the trial. The Court sealed the juror questionnaires in order to protect the Defendants’ fair trial rights. The trial, however, is now over and concerns regarding fair trial rights have evaporated. Releasing the requested information now will not endanger the Defendants’ fair

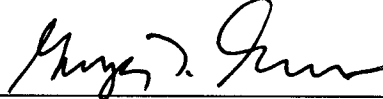
trial rights or prejudice them in any way. Indeed, despite earlier fair-trial arguments, the Defendants have been exonerated on several charges and convicted of none. Clearly, the defendants received a fair trial and there is simply no reason to for the continued closure of the Completed Juror Questionnaires. Consequently, the juror questionnaires should be open for inspection and copying.

#### CONCLUSION

Now that the trial is over and a verdict has been rendered, no basis exists for continued closure of the juror questionnaires. Additionally, and in accordance with this Court's prior Order, the Tribune should be granted access to the juror questionnaires.

Respectfully submitted,

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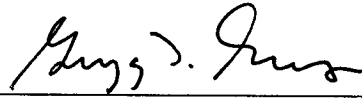
Attorneys for Intervenor

Media General Operations

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 8, 2005, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Terry A. Zitek  
Kevin T. Beck  
Stephen N. Bernstein  
M. Allison Guagliardo  
Bruce G. Howie  
William B. Moffitt  
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Attorney

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